

### REMARKS

In the Office Action, the Examiner objected to FIG. 4, objected to the ABSTRACT, and rejected pending claims 1-20.

#### **I. Drawings**

With respect to the drawings, the required corrected drawing for FIG. 4 is submitted herewith. The corrected drawing for FIG. 4 is labeled in the top margin thereof as "Replacement Sheet", and now includes the legend "Prior Art" as required by the Office Action. Accordingly, Applicants submit that the corrected drawing for FIG. 4 complies with the requirements set forth in 37 C.F.R. §1.121(d). Withdrawal of the rejection is respectfully requested.

#### **II. Specification**

With respect to the Specification, Applicants have herein amended the Abstract, and submit that the Abstract, as amended, complies with the requirements set for in 37 C.F.R. §§ 1.72 and §1.121 (b)(2). Withdrawal of the rejection is respectfully requested.

#### **III. Claim Rejections**

With respect to the claims, the claims currently stand rejected as follows:

- Claims 1-2, 7-9 and 17-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 3,604,057 (Nixdorff);
- Claims 1, 4 and 6-9 stand rejected under 35 U.S.C. §102(b) as being anticipated by contents of the application which the Examiner has deemed to be admitted prior art;
- Claims 3 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nixdorff; and
- Claims 4-6 and 11-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nixdorff in view of U.S. Patent 6,131,766 (King).

By this Amendment, claims 1, 3 and 10 have been amended, claim 9 has been canceled, and new claims 21 and 22 have been added. Applicants believe that no new matter is introduced

by the amendment, and submit that support for the new and amended claims may be found, for example, in paragraphs [0032] and [0040] of the specification as originally filed. Upon entry of this Amendment, claims 1-8 and 10-22 are pending. For the reasons set forth hereinbelow, Applicants traverse the rejections and respectfully request that the §102 and §103 rejections of the claims be withdrawn.

A. §102(b) Rejections

1. Claims 1-2, 7-8 and 17-20

Applicants submit that claim 1 is not anticipated by Nixdorff because Nixdorff fails to disclose each and every element of claim 1. *See* MPEP § 2131 (stating that a claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference). More particularly, Applicants submit that Nixdorff fails to disclose, among other things, a “pressing means for pressing the holder against the measuring vessel” as recited in claim 1.

Nixdorff discloses a mixing-metering device having three (3) distinct plates, first, “a top plate 34 secured to the bottom of hopper 26, [second,] a bottom plate 35 secured to the top of mixing chamber 28 and[ third,] an intermediate slide plate 36.” (Nixdorff, Col. 2, Lns. 52-54). The first plate, the top plate 34, is “secured to the shoulders of side rails 42 which in turn is secured to lower plate 35.” *Id.* at Col. 2, Lns. 57-58; *see Id.* at Fig. 4, 5, 6. This first plate, the top plate 34, “includes a downwardly extending shoulder 66 which mates with the recessed upper portion of plate 36, [the intermediary plate,] to assure proper alignment thereof.” *Id.* at Col. 2, Lns. 70-73. Thus, Nixdorff discloses a set of three plates, wherein the top plate 34 is mounted and secured to a set of rails 42 where the rails 42 are, in turn, mounted and secured to the bottom plate 35. Such an arrangement effectively fastens the top plate 34 to the bottom plate 35 and creates a space between the plates wherein an intermediate plate 36 may rest. *See Id.* at

Fig. 4. The intermediate plate 36 further rests upon a bearing surface 64 which extends from the bottom plate 35 and “serve[s] to maintain a small amount of clearance between the lower surface of [bottom] plate 35.” *Id.* at Col. 2, Lns. 72-74. The downwardly extending shoulder of the top plate 34 “mates” with a recessed upper portion of the intermediate plate 36 in order “to assure proper alignment thereof.” *Id.* at Col. 2, Lns. 73.

Applicants submit that Nixdorff does not teach a “pressing means for pressing the holder against the measuring vessel.” The configuration of Nixdorff effectively bolts, or fastens, or otherwise affixes, a top and bottom plate together such that a static empty space is created between the plates. This empty space allows for an intermediate plate to be inserted therewith such that the intermediate plate can properly rest upon a bearing surface of bottom plate to ensure some clearance exists between the intermediate plate and the bottom plate. Although Nixdorff discloses a “downwardly extending shoulder” from the top plate which “mates” or “aligns” with the intermediate plate, nothing in Nixdorff discloses a means by which the top plate is “pressed” against the intermediate plate. To “mate” means to “fit together” or “join,” nothing in the definition of “mate” connotes the application of pressure or an act of pressing. See Exhibit A, “mate,” MERRIAM-WEBSTER ONLINE DICTIONARY, 2010, <http://www.merriam-webster.com/dictionary/mate> (19 Mar. 2010). Similarly, to “align” means to “bring into line” and, again, does not connote the application of pressure or an act of pressing. See Exhibit B, “align,” MERRIAM-WEBSTER ONLINE DICTIONARY, 2010, <http://www.merriam-webster.com/dictionary/align> (19 Mar. 2010). Nixdorff’s configuration of the top plate and bottom plate creates a situation wherein it is impossible to exert any pressure upon the intermediate plate, or measuring vessel. As a matter of weight transference, the weight of Nixdorff’s top plate is transferred directly to the bottom plate via the rail sets. Accordingly, no weight amounting to a “pressing” can be applied to the intermediate plate, or measuring vessel.

See Nixdorff, at Fig. 4, 5, 6.

The Examiner contends that Nixdorff discloses “a pressing means for pressing the holder toward the measuring vessel (the weight top plate 34 on slide plate 36 [the intermediate plate]; the phrase ‘means for pressing’ invokes 35 U.S.C. 112, sixth paragraph and Applicant’s disclosed means for pressing includes springs, hydraulic forces, pneumatic forces, the weight of the holder and/or magnetic forces...).” Office Action, at 3-4. Although Examiner is correct that Applicants’ disclosed means for pressing includes springs, hydraulic forces, pneumatic forces, magnetic forces, elastic forces, or the weight of the holder itself, or additional weights attached thereto, nothing in Nixdorff teaches any of the preceding. As discussed above, Nixdorff discloses a top plate which is fastened, rests upon, or is otherwise affixed to a set of rails. The rails are, in turn, fastened, rest upon, or are otherwise affixed to the bottom plate. This configuration creates a single structure wherein the weight from the top plate is effectively transferred to the bottom plate. Accordingly, Nixdorff does not disclose a means for pressing the holder against the measuring vessel which includes springs, hydraulic forces, pneumatic forces, magnetic forces, elastic forces, or the weight of the holder itself, or additional weights attached thereto.

Accordingly, Applicants submit that independent claim 1 is not anticipated by Nixdorff because Nixdorff fails to disclose each and every element of claim 1. For similar reasons, Applicants also submit that claims 2, 7-8 and 17-20, which depend from claim 1, are not anticipated by Nixdorff. Therefore, Applicants request that the §102(b) rejections associated with claims 1-2, 7-8 and 17-20 be withdrawn.

B. §102(a) Rejections

1. Claims 1, 4 and 6-8

The Examiner has deemed the content disclosed at pages 1-2 and FIG. 4 of the application to be admitted prior art.

Applicants submit that claim 1 is not anticipated by contents of the application which the Examiner has deemed to be admitted prior art because such contents fail to disclose each and every element of claim 1. *See* MPEP § 2131 (stating that a claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference). More particularly, Applicants submit that the contents of the application which the Examiner has deemed to be admitted prior art fail to disclose, among other things, “a pressing means for pressing the holder against the measuring vessel” as recited in claim 1.

As stated in Applicants’ disclosure, Figure 4 is properly a depiction of the prior art provided to illustrate the conventional configuration of measuring vessels used to measure a granular object such as powdery or granular medicine. Application, at ¶ 0002. Figure 4 is, however, a simplification of the prior art and was provided to illustrate only the bare essentials of the problem which is solved by the present invention. Noticeably, the three pieces are depicted in a void where (1) no means for actuating the measuring vessel 1 is shown, (2) no means for securing the holder 2 or (3) shutter 4 upon an assembly implementing the configuration is shown, and (4) no means for connecting the holder 2 to the shutter 4 is shown.

The Examiner asserts that even in light of the four (4) points above, Figure 4 comprises prior art which anticipates the present invention under § 102(a). This is incorrect for the above reasons, as well as, at least, the fact that Figure 4 does not disclose a “pressing means for pressing the holder against the measuring vessel.” Therefore, looking only to what is shown in Figure 4, the holder 2 does not exert any pressure, gravitational or otherwise, upon the measuring vessel.

Accordingly, Applicants submit that independent claim 1 is not anticipated by contents of

the application which the Examiner has deemed to be admitted prior art because such content fail to disclose each and every element of claim 1. For similar reasons, Applicants also submit that claims 4 and 6-8, which depend from claim 1, are not anticipated by contents of the application which the Examiner has deemed to be admitted prior art. Therefore, Applicants request that the §102(a) rejections associated with claims 1, 4 and 6-8 be withdrawn.

C. §103 Rejections

1. Claims 3 and 10

Claims 3 and 10 depend from claim 1. Applicants submit that claim 1 is nonobvious in view of Nixdorff. Applicants also submit that claims 3 and 10, which depend from claim 1, are also nonobvious in view of Nixdorff. See MPEP §2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious); *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The Examiner has not alleged that claim 1, the only independent claim in the present application, is obvious in view of Nixdorff. Regardless, claim 1 can not be found to be obvious in view of Nixdorff for, at least, the reasons discussed below.

Applicants respectively submit that amended claim 1 is nonobvious in view of Nixdorff. In accordance with the analysis stated in *Graham v. John Deere Co.*, a determination of obviousness under § 103 requires (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. The question of obviousness must be resolved on the basis of these factual inquiries and any secondary considerations. See MPEP § 2141.

Applicants submit that the differences between Nixdorff and the claimed invention are substantial, and that when the invention recited in claim 1 is considered as a whole, the invention recited in claim 1 is nonobvious in view of Nixdorff. See MPEP § 2141.02 (stating that

in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious).

As discussed with regards to the § 102(b) rejection concerning independent claim 1 above, Nixdorff does not teach, suggest, or provide a motivation for including “a pressing means for pressing the holder against the measuring vessel.” As discussed, the invention of Nixdorff discloses a top plate which is fastened, rests upon, or is otherwise affixed to a set of rails. The rails are, in turn, fastened, rest upon, or are otherwise affixed to the bottom plate. This configuration creates a single structure wherein the weight from the top plate is effectively transferred to the bottom plate. Within the space created between the top plate and bottom plate, an intermediate plate may be positioned and actuated upon. Accordingly, Nixdorff does not disclose a means for pressing the holder against the measuring vessel which includes springs, hydraulic forces, pneumatic forces, magnetic forces, elastic forces, or the weight of the holder itself, or additional weights attached thereto.

It would not be obvious to a person of ordinary skill in the art to, at least, include the pressing means of the present application with the invention of Nixdorff. Nixdorff's configuration of the top plate and bottom plate creates a situation wherein it is impossible to exert any substantial pressure upon the intermediate plate, or measuring vessel. As a matter of weight transference, the weight of Nixdorff's top plate is transferred directly to the bottom plate via the rail sets. Accordingly, no weight amounting to a “pressing” can be applied to the intermediate plate, or measuring vessel.

A prima facie case of obviousness may be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471 (Fed. Cir. 1997); MPEP 2144.05(III). In this case, Nixdorff teaches away from implementing a

pressing means consistent with the present application simply because it is impossible for the top plate to move and therefore exert any pressure on the intermediate plate. Accordingly, not only does Nixdorff not disclose the pressing means disclosed in the present invention, but actually teaches away from such a feature.

It would further not be obvious to a person of ordinary skill in the art to apply a pressing means to the invention of Nixdorff because to apply such a pressing means would render the invention of Nixdorff ineffective and inoperable. If springs, hydraulic forces, pneumatic forces, magnetic forces, elastic forces, or the weight of the holder itself, or additional weights attached thereto were applied to the top plate, such forces would transfer through the rails to the bottom plate. Application of forces contemplated by the present application upon the bottom plate would likely adversely effect the structural integrity of the apparatus as a whole, and have no affect upon the intermediate plate, or measuring vessel. Accordingly, such a pressing means, as disclosed in the present application, would not only likely render Nixdorff's invention ineffective or inoperable, but be completely undesirable.

Therefore, Applicants submit that claim 1 is nonobvious in view of Nixdorff. Applicants also submit that claims 3 and 10, which depend from claim 1, are also nonobvious in view of Nixdorff. *See* MPEP §2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious). Accordingly, Applicants respectfully request that the §103 rejections of claims 3 and 10 be withdrawn.

2. Claims 4-6 and 11-16

Claims 4-6 and 11-16 depend from claim 1. Applicants submit that claim 1 is nonobvious in view of Nixdorff in view of King. Applicants also submit that claims 4-6 and 11-16, which depend from claim 1, are also nonobvious in view of Nixdorff in view of King. *See*



MPEP §2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious); *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The Examiner has not alleged that claim 1, the only independent claim in the present application, is obvious in view of Nixdorff in view of King. Regardless, claim 1 can not be found to be obvious in view of Nixdorff in view of King for, at least, the reasons discussed below.

In accordance with the analysis stated in *Graham v. John Deere Co.*, a determination of obviousness under § 103 requires (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. The question of obviousness must be resolved on the basis of these factual inquiries and any secondary considerations. *See* MPEP § 2141.

Applicants submit that the differences between the cited references, either alone or in combination, and the claimed invention are substantial, and that when the invention recited in claim 1 is considered as a whole, the invention recited in claim 1 is nonobvious in view of the combination of Nixdorff and King. *See* MPEP § 2141.02 *id.*

King does not cure the defects of Nixdorff. The Examiner cites to King for the proposition that “King teaches a dispensing device having sliding parts which are made from acetal resin.” However, such a proposition does not cure the defects of Nixdorff with respect to independent claim 1. Nothing in King discloses, teaches, suggests or makes obvious in view of Nixdorff a means for pressing the holder against the measuring vessel which includes springs, hydraulic forces, pneumatic forces, magnetic forces, elastic forces, or the weight of the holder itself, or additional weights attached thereto. Accordingly, Applicants submit that King fails to remedy the defects of Nixdorff with respect to claim 1.

Therefore, Applicants submit that claim 1 is nonobvious in view of the combination of Nixdorff and King. Applicants also submit that claims 4-6 and 11-16, which depend from claim

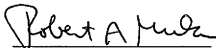
1, are also nonobvious in view of the combination of Nixdorff in view of King. *See* MPEP §2143.03 *id.* Accordingly, Applicants respectfully request that the §103 rejections of claims 4-6 and 11-16 be withdrawn.

CONCLUSION

Applicants respectfully request a Notice of Allowance for the pending claims in this application. If the Examiner believes that personal communication will expedite the prosecution of this application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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Respectfully submitted,



Robert A. Muha  
Registration No. 44,249

Reed Smith LLP  
P.O. Box 488  
Pittsburgh, PA 15230  
(412) 288-7222

/Matthew P. Frederick/  
Matthew P. Frederick  
Registration No. 60,469

Reed Smith LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301  
(215) 241-7992